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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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Date: OCT 2 7 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an employment agency. It seeks to employ the beneficiary permanently in the United States as a medical and health services manager. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1]

The petition is accompanied by an ETA Form 750, Application for Alien Employment Certification, certified by the United States Department of Labor.

The director's decision denying the petition concluded that, since the minimum requirements of the offered position set forth on the labor certification do not require a member of the professions holding an advanced degree, and the petition cannot be approved in the requested classification.

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

Here, the Form I-140 was filed on March 13, 2007. On Part 2.d. of the Form I-140, the petitioner indicated that it was filing the petition for a member of the professions holding an advanced degree.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

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[1] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

[2] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The regulation at 8 C.F.R. § 204.5(k)(4) states that the job offer portion of the labor certification "must demonstrate that the job requires a professional holding an advanced degree or the equivalent."

In this case, the job offer portion of the Form ETA 750 states that the minimum level of education required for the position is a bachelor's degree in nursing or related sciences and that experience in the job is not required. The ETA 750 does not require a member of the professions holding an advanced degree or equivalent because it permits the beneficiary to qualify for the offered position with less than a master's degree or a bachelor's degree and five years of experience in the specialty.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

On appeal, the petitioner states:

> The decision in part states that, the ETA-750 and its specification do not demonstrate that the job requires an advanced degree professional.
>
> However, this is contrary to the U.S. Department of Education, Certification requirement Rule 6a-4.078 (please see copy attached hereto), which states in part, it is an absolute requirement to have a bachelor's or higher degree with certification in an academic vocational, administrative, or specialty class coverage plus at least two (2) years of full time occupational experience or the equivalent. This labor certification is approved by the U.S. Department of Labor for a professor. Please see addendum to Form I-140 part 6; job description, where clearly describes the duties of a Professor in clinical seminar areas such as nursing, therapy, medical records, or health information. Therefore, your decision is based in that, no representations have been made that the beneficiary has exceptional ability to serve as Manager of the Health and Medical Services, which is wrong.
>
> This petitioner desires the services of the beneficiary as a professor, as described on its labor certification, and as such and pursuant to the aforementioned U.S.D.O.E.

> Rule 6a-4.078, a bachelor's or higher degree is required which is within the definition of a "professional" pursuant to Section 101(a)(32) if [sic] the INS Act. Wherefore, your decision was made without regard to the facts stated on the labor certification's petition and on the Immigration Petition for Alien Worker, Form I-140 which decision constitutes an abuse of discretion.

The petitioner's arguments do not establish that the petition can be approved in the requested classification. The Form ETA 750 does not require an advanced degree or equivalent to perform the offered position, therefore, pursuant to 8 C.F.R. § 204.5(k)(4), the petition cannot be approved for a member of the professions holding an advanced degree.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.